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April 12, 1999

VIA HAND DELIVERY

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96-981
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APR 12 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of Inter-Carrier Compensation for ISP-Bound
Traffic, Notice of Proposed Rulemaking, CC Docket No. 99-68
Comments of Prism Communications Services, Inc.

Dear Ms. Roman Salas:

Pursuant to section 1.419(b) of the Commission's rules, transmitted herewith, on behalf of Prism Communications Services, Inc., are an original and four (4) copies of its comments in the above-referenced proceeding. Also enclosed is a copy of these comments on diskette formatted in WordPerfect 5.1 for Windows.

In addition, enclosed is a confirmation copy of this filing marked "Stamp In." Please date stamp this copy and return it to the courier delivering this package.

Should any question arise concerning this filing, please contact the undersigned attorney directly.

Sincerely,

Randall B. Lowe (signature)

Randall B. Lowe
Counsel for Prism Communications
Services, Inc.

RBL/vl
Enclosures

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APR 12 1999

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	
)	
Inter-Carrier Compensation)	
for ISP-Bound Traffic)	CC Docket No. 99-68

COMMENTS OF PRISM COMMUNICATIONS SERVICES, INC.

Prism Communications Services, Inc. ("Prism"), formerly Transwire Communications, Inc., by and through counsel, hereby submits its comments on the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking in the above-referenced proceeding concerning inter-carrier compensation for Internet Service Provider ("ISP")-bound traffic.¹

I. INTRODUCTION

The Commission's NPRM and companion Declaratory Ruling ("Ruling") were issued in response to several petitions for reconsideration and clarification on the subject of whether a local exchange carrier ("LEC") is entitled to receive reciprocal compensation for traffic that the LEC delivers to information service providers, in particular, ISPs. The Commission noted that while competitive LECs ("CLECs") contend that calls to ISPs are local traffic and, therefore, subject to reciprocal compensation,

¹ See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Declaratory Ruling, CC Docket No. 96-98 and Inter-Carrier Compensation for ISP-Bound Traffic, Notice of Proposed Rulemaking, CC Docket No. 99-68, FCC 99-38 (released February 26, 1999) ("NPRM").

incumbent LECs ("ILECs") generally contend that calls to ISPs are interstate in nature and therefore, beyond the scope of reciprocal compensation agreements.²

In its Ruling, the Commission concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate in nature.³ Nevertheless, the Commission concluded that carriers are bound by their existing interconnection agreements, as interpreted by state commissions, and thus are subject to reciprocal compensation obligations to the extent provided by such agreements or as determined by state commissions.⁴ The Commission also preserved its rule that exempts Internet and other information services from interstate access charges.⁵

In the NPRM, the Commission requests comments regarding the adoption of a federal rule to govern reciprocal compensation in the future. Specifically, the Commission tentatively concludes that inter-carrier compensation for ISP-bound traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Communications Act of 1934 ("Act"), as amended by the Telecommunications Act of 1996.⁶ The Commission also seeks comment on an alternative proposal that it adopt a set of federal rules governing inter-carrier compensation for ISP-

² *See id.* at 1-2.

³ *Id.* at 14.

⁴ *Id.* at 15.

⁵ *Id.*

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.* ("1996 Act"); *See also*, NPRM at 19.

bound traffic pursuant to which parties would engage in negotiations concerning rates, terms, and conditions applicable to delivery of interstate ISP-bound traffic.⁷

In sum, through the instant proceeding, the Commission takes steps to establish an adequate record upon which to adopt a rule regarding inter-carrier compensation for ISP-bound traffic. Indeed, in the Declaratory Ruling and NPRM, the Commission concludes that adopting such a rule to govern prospective compensation would serve the public interest.⁸

A. Summary of Prism's Operations

Prism is an advanced communications company using innovative digital modem technology to provide high-speed data, voice and Internet connectivity across the existing copper telephone infrastructure. Prism is a next-generation communications provider in that it offers its customers both local and long-distance telephone services in addition to reliable high-speed access to the Internet or corporate "intranets." Prism has already launched its "Red" high-speed Internet access service in the city of New York and is currently rolling out competitive local exchange service nationwide. In short, Prism operates as both an ISP and a competitive LEC.

II. DISCUSSION

A. Background

In the NPRM, the Commission proposes two alternative paths for implementing an inter-carrier compensation regime. First, the Commission tentatively concluded that inter-carrier compensation for ISP-bound traffic should be governed prospectively by interconnection agreements negotiated and

⁷ See *NPRM* at 20.

⁸ *Id.* at 18.

arbitrated under sections 251 and 252 of the Act.⁹ Resolutions of failures to reach agreement on such traffic would occur through arbitrations conducted by state commissions, which are appealable to federal courts.¹⁰ The Commission noted that if a state commission fails to act, the FCC would assume the responsibility of the state commission within 90 days of being notified of such failure.¹¹ The Commission stated that this proposal could help facilitate policy goals by forcing parties to hold a single set of negotiations regarding rates, terms, and conditions for interconnected traffic, and to submit all disputes regarding interconnected traffic to a single arbitrator.¹²

Second, the Commission proposes an alternative approach that it adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic pursuant to which parties would engage in negotiations concerning rates, terms, and conditions applicable to delivery of interstate ISP-bound traffic.¹³ These negotiations would commence on the effective date of the adopted rule but could proceed in tandem with broader interconnection negotiations between the parties.¹⁴ The FCC, through delegation through the Common Carrier Bureau, might resolve disputes, at the request of either party, through an arbitration-like process following a discrete period of voluntary negotiation.¹⁵

⁹ *Id.* at 19.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 20.

¹⁴ *Id.*

¹⁵ *Id.*

B. The Commission Should Adopt A Set Of Federal Rules To Govern Inter-Carrier Compensation For ISP-Bound Traffic.

Prism strongly supports the Commission's alternative proposal that it adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic. Whether right or wrong, the Commission has already determined that the transmission between an end user and the Internet constitutes interstate traffic. That being the case, since Section 2(a) of the Act grants the Commission jurisdiction over "all interstate and foreign communication by wire," the FCC's jurisdiction now extends to the regulation of ISP-bound traffic.¹⁶ Notably, the Act creates a bifurcated structure for interstate and intrastate wire communications with interstate communications wholly entrusted to the Commission. Under this regulatory structure, the Commission is charged with providing "a rapid, efficient, Nation-wide, and world-wide wire . . . communications service."¹⁷ In imposing these obligations on the Commission, Congress sought efficiency in the deployment of telecommunications services through centralizing authority in the Commission.¹⁸ Prism believes that implementing a federal rule to govern inter-carrier compensation for ISP-bound traffic would well serve these statutory policy goals. In particular, such a rule would promote stability and efficiency by centralizing potential disputes regarding inter-carrier compensation --now an interstate matter-- in a single venue. Such an approach will ensure consistency and order for competitive carriers whose business plans would otherwise be left to the mercy of uncertainty and delay at the various state commissions. Further, federal rules governing inter-carrier compensation would eliminate forum shopping and its inevitable impact on nation-wide consumer choice as competitive carriers limit Internet-related service offerings to certain "favorable" states.

¹⁶ 47 U.S.C. § 152(a).

¹⁷ 47 U.S.C. § 151.

¹⁸ *Id.*

Additionally, the Act specifically confers broad powers on the FCC to regulate all aspects of the interstate telecommunications market.¹⁹ For example, the Commission's authority under the Act allows it to "require just and reasonable rates, and to mandate interconnection between carriers."²⁰ In fact, the Commission has for years exercised jurisdiction over facilities and services used to complete interstate calls²¹ and has thus established the requisite expertise to oversee interstate matters including inter-carrier compensation. Moreover, the Commission is in a superior position, relative to the state commissions, to enforce an inter-carrier compensation mechanism evenhandedly. While admittedly state commissions are in a better position to review the incumbent LECs' state tariff practices, significantly, Congress has provided a procedure under section 410(c) of the Act, 47 U.S.C. § 410(c), to guide FCC regulation with regard to matters relating to "common carrier communications of a joint Federal-State concern." This procedure recognizes national primacy while allowing the Joint Board to make recommendations and requests for the Commission's prompt review and action.²² As such, Congress contemplated the FCC's discretion to follow or ignore state recommendations regarding interstate matters while not frustrating the FCC's broad power to regulate all aspects of interstate telecommunications.

Accordingly, Prism strongly urges the Commission to adopt a set of federal rules governing inter-carrier compensation for ISP-bound traffic. In light of the current climate of indecision and uncertainty at the state level, such a rule is vital to the evolving competitive communications market, clearly within the FCC's jurisdiction and expertise, and consistent with the Act's goal of providing uniform, efficient

¹⁹ 47 U.S.C. §§ 201-205.

²⁰ 47 U.S.C. §§ 214(a), 201(a) & (b).

²¹ *See, e.g., NARUC v. FCC*, 746 F.2d 1492, 1499 (D.C. Cir. 1984).

²² 47 U.S.C. § 410(c).

service. In the interim, however, the Commission should clarify that state commissions are free to decide whether inter-carrier-compensation is appropriate.

II. The Commission Should Make A General Pronouncement That Inter-Carrier Compensation Is Due For ISP-Bound Traffic and Set the General Parameters for Such Compensation.

The Commission must affirmatively establish clear federal regulations guiding the scope of and mechanism for inter-carrier compensation as was done in its First Report and Order.²³ Because competitive LECs have little bargaining power *vis-à-vis* the ILECs, the Commission cannot leave the issue of what compensation applies to ISP-bound traffic to be negotiated between the parties. The competitive carrier's survival depends in part on its ability to get to market quickly and cost effectively. The necessity to interconnect with the ILEC's network and bring services to market quickly, in large part, leaves most competitive carriers with little or no leverage on the issue of inter-carrier compensation. The Commission must, at minimum, set the rules of the game and not allow competitive carriers seeking to enter the marketplace to founder at the feet of the ILECs.

Some form of inter-carrier compensation is clearly due for ISP-bound traffic. It is beyond dispute that local exchange carriers incur costs to terminate the traffic of other carriers over their network. These carriers must be compensated for these services. Until the FCC issues costing or pricing rules on this issue, local exchange carriers cannot be assured that they will be able to recover the costs of terminating ISP-bound traffic because they can only look to the ISP, who is currently exempt from paying access charges. If competitive LECs are required to absorb these costs, they may not have the wherewithal to compete in the local exchange marketplace. As the Commission's NPRM makes clear, the FCC's "policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the

²³ First Report and Order, 11 FCC Rcd. 15499, 15557-61 (1996) (noting that the FCC has authority to establish broad national rules governing the implementation of Section 251, including rates and terms of interconnection).

separate context of reciprocal compensation, suggest that such compensation is due for that traffic.²⁴ Accordingly, reciprocal compensation is an appropriate method of compensating carriers for this traffic.

Clearly, the FCC should proceed expeditiously to give direction to this critical issue. To this end, Prism urges the Commission to seek specific costing information from carriers terminating ISP-bound traffic in order to develop a compensation mechanism that appropriately reflects those costs. In the event the FCC fails to establish a costing mechanism for inter-carrier compensation, however, Prism urges the Commission to declare that (1) some form of compensation is due for ISP-bound traffic; and (2) all carriers should be treated the same with respect to inter-carrier compensation regardless of the time at which the carriers entered into interconnection agreements. Prism believes that allowing some carriers to receive inter-carrier compensation, whether as a result of previously negotiated interconnection agreements or as determined by state commissions, will give a tremendous competitive advantage to some carriers and a debilitating disadvantage to others.²⁵

Furthermore, the Commission should clarify that ILECs must offer business line or interoffice facilities ("IOF") rates for ISP-bound traffic. In particular, as a result of the Commission's Declaratory Ruling, Prism understands that some states may have instituted investigations into whether or not ISP-bound traffic may continue to traverse over IOF. That is, the commissions are looking into whether both local and interstate traffic may traverse IOF. This potential restriction creates an anomaly for CLEC/ISP hybrid companies such as Prism since if state commissions determine that ISP-bound traffic is not allowed on IOF facilities, carriers will logically turn to the use of Feature Group D facilities --those

²⁴ *NPRM* at 17.

²⁵ For example, some competitive carriers were unfairly forced into interconnection agreements (prior to the issuance of the instant *NPRM*) which specifically eliminated reciprocal compensation for ISP-bound traffic based on the ILEC's interpretation of the Commission's Memorandum Opinion and Order in the GTE ADSL services decision. *See In the Matter of GTE Telephone Operating Cos.*, FCC 98-292, CC Docket No. 98-79 (released Oct. 30, 1998).

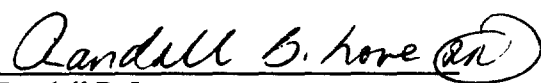
facilities utilized for interexchange traffic (i.e., traffic subject to access charges). However, it is also Prism's understanding that incumbent LECs will not permit ISPs to utilize Feature Group D since ISPs are exempt from access charges. Instead, a CLEC carrying ISP-bound traffic will be required by ILECs to use a type of business facility labeled "Enterprise" which is approximately six times the cost of IOF facilities. Certainly such a drastic cost differential for facilities will force carriers to modify service offerings and spread added costs to consumers. Accordingly, it is in the public's interest that the Commission clarify for state commissions that ISP-bound traffic may continue to utilize IOF facilities.

CONCLUSION

Stability and clarity on a national level with respect to inter-carrier compensation for ISP-bound traffic is vital to the deployment of local competitive services and the viability of new and emerging telecommunication companies. Accordingly, Prism urges the Commission to adopt federal rules to govern inter-carrier compensation for ISP-bound traffic, and to make a general pronouncement that compensation, based on relevant costing information, is due for such traffic. Such an approach is within the Commission's jurisdiction and advances the public interest.

Respectfully submitted,

PRISM COMMUNICATIONS SERVICES, INC.

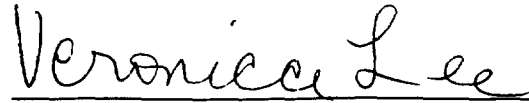

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Dated: April 12, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Comments of Prism Communications Services, Inc. was sent via hand-delivery to the individuals on the attached service list, this 12th day of April, 1999.



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